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ASSESSMENT OF DAMAGES UPON DEFAULT.

NUMEROUS State statutes wisely permit the assessment of liquidated damages by the clerk upon a default. On authority, such statutes are not in violation of the constitutional right of trial by jury. The United States Courts, in one of the Circuits, have uniformly refused to conform to the State practice in this respect and in one District a formal rule forbids the assessment of damages upon default otherwise than by a jury. The authority of the court to adopt such a rule may well be questioned. The unwisdom of the requirement is apparent.

The Federal Constitution created no right of trial by jury: it guaranteed the then existing common law right. At common law, upon a default, the assessment of damages, whether liquidated or unliquidated, was never referable of right to a jury. In the last century the established practice of the courts of King's Bench and Common Pleas, where judgment was recovered by default upon a bill of exchange or promissory note, was "to refer it to the master or prothonotary to ascertain what is due for principal, interest and costs." *Raymond* v. *Danbury and Norwalk R. R. Co.*, 14 Blatchf. 133. Even when a writ of inquiry was allowed the court was not bound by the jury's finding. *Vin. Abr.* 301. In *Bruce* v. *Rawlins*, 3 Wilson, 62 (action of trespass and false imprisonment), Lord Chief Justice Wilmot said: "There is also a difference between a principal verdict of a jury and a writ of inquiry of damages, the latter being only an inquest of office to inform the conscience of the court, and which they might have assessed themselves without any inquest

at all." As early as 1797, the Supreme Court of the United States decided that the Federal courts were at liberty to follow the State practice in this particular. *Brown* v. *Braam*, 3 Dallas 344. Judge Shipman, in *Raymond* v. *D. & N. R. R. Co.*, *supra*, absolutely denies the constitutional right to have damages assessed by a jury after default. The Circuit Courts are now required to conform to the State practice "as near as may be, *any rule of practice to the contrary notwithstanding.*" R. S. 914. In certain specified cases, upon default, the damages, if unliquidated, must, upon request of either party, be assessed by a jury. R. S. 961.

The amount due upon a promissory note, the cause of action standing confessed, is not a matter of judgment or of conscience, but of law. The intervention of a jury is therefore mere form. How an insistence on this mere form can be defended in the face of its obvious inconvenience, the authoritative denial of any right to it, and the "as near as may be" statutory provision is not plain.

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THE questions arising from the disaster to the *Maine*, though some of them without precedent, have been rendered clearer by the application of legal principles; and the consideration of this lamentable affair from the dispassionate and unprejudiced standpoint of the law, has done much to prevent hasty judgment and the impulses of passion from injuring our cause. This indicates the importance, the practicality of the study of international law, the application of legal logic, which has been said to be nothing more than "common sense," to the relations of nations. Indeed, recent events have impressed us with the value of this branch of legal study as a means tending to do away with war and making for universal peace and harmony.

International law cannot be invariably enforced, for the same and the obvious reasons that make arbitration at times impracticable; yet this is no reason for rejecting the subject as something only for the theorist. But it seems that the world has been slow to appreciate the value of a system by which friction in international intercourse might be in many cases prevented and in all cases reduced. The development of individuals is far in advance of the progress of nations in respect of invoking legal principles to govern the enforcement of rights and the discharge of duties. There was a time when, between man and man, as well as between nations, might was right; when differences were settled and wrongs redressed by a personal combat

of the parties. Later arose, from considerations of expediency as well as of morals which nations have not recognized, rude systems of justice, from which the present prevailing system has developed. But, in international affairs, might is still, to a deplorable degree, the only right existing, and nations have continued for centuries to settle their disagreements in much the same old way.

Science, by improvement in ordnance and explosives, has brought the destructive possibilities of war to a point horrible to contemplate, and, if as some hopefully believe, modern progress in the invention of weapons of warfare should soon afford a practical discouragement to war, the study of international law will become all the more important and especially to those who have hope of holding high places in our government. Even now, knowledge of the subject is indispensable to men in the diplomatic service and to all others who represent the country in international affairs.

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THE JOURNAL is pleased to announce the election to the editorial board of the following men:

Harrison Hewitt, Knox Maddox, R. L. Munger, A. W. Powell, L. M. Sonnenberg, C. H. Studinski.

The successful thesis in competition for the LAW JOURNAL Prize was written by C. H. Studinski